



2008-131

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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September 11, 2008

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Municipalities - Streets - Dedication -
Utilities - Russell County

The City of Phenix City has the statutory authority to accept the dedication of streets, roads, and utilities of a privately owned condominium complex that is incorporated in a subdivision within Phenix City that has mixed zoning.

Dear Mr. Graham:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Phenix City.

QUESTION

Would the City of Phenix City violate section 94 of the Alabama Constitution if it accepts the streets and/or roads and utilities of a privately owned condominium complex that is incorporated in a subdivision that has mixed zoning?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that the residents of McIntosh Villas, a condominium or duplex section located within McIntosh Subdivision and within Phenix City, have petitioned the City of Phenix City to accept the streets and utilities located within this area. Previously, the streets and utilities associated with the McIntosh Subdivision were accepted at the time of that development. The streets and utilities associated with McIntosh Villas, however, were not accepted by the city because the developer failed to request

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the acceptance. At this point, the subdivision has mixed zoning. Your particular request contemplates whether this subsequent acceptance by the city of the streets and utilities located within McIntosh Villas would violate section 94 of the Constitution of Alabama.

Section 94 of the Constitution of Alabama, as amended by Amendment 558, provides that "[t]he legislature shall not have the power to authorize any county, city, town, or other subdivision of this state . . . to grant public money or thing of value in aid of, or to any individual, association, or corporation whatsoever." ALA. CONST. art. IV, § 94 (amends. 112, 558). As stated, this section prohibits a municipality from granting money or other thing of value in aid of a private person, association, or corporation. In 1994, however, the Supreme Court of Alabama expanded its interpretation of this section. Specifically, the court interpreted section 94 as allowing the appropriation of public revenues in the aid of an individual, association, or corporation only when the appropriation is for a "public purpose." *Slawson v. Ala. Forestry Comm'n*, 631 So. 2d 953, 956 (Ala. 1994). In *Slawson*, the court determined that a public purpose is served if the objective is to promote public health, safety, morals, security, prosperity, contentment, and the general welfare of the community. *Slawson*, 631 So. 2d at 953. In this instance, the city is not granting a thing of value to a private individual, but is accepting a dedication of streets and utility lines. The private property owners are releasing any rights to control the use of the private property by transferring the ownership of the property to the city.

Pursuant to section 11-40-1 of the Code of Alabama, municipalities are allowed to acquire property by purchase, gift, devise, or appropriation. This section states, in pertinent part, as follows:

All municipal organizations now existing in the state of Alabama, whether incorporated under the general laws of the state or by special act of the legislative department of the state government, and now exercising corporate powers or functions and all towns and cities that may hereafter be incorporated under the provisions of this title shall be bodies politic and corporate, using a common seal, which may at any time be changed, and having perpetual succession under the name now used or hereafter assumed as provided in this title, and each under such name as the "City of _____" or "Town of _____," as the case may be, shall sue and be sued, contract and be contracted with, *acquire property by purchase, gift, devise or appropriation for any municipal purpose authorized in this title*, and the same shall be held, managed and controlled by the said

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municipal corporations under the applicable provisions of law contained in this title and all rules, regulations, resolutions and ordinances that may be required to carry out any or all of the applicable provisions of this title shall be adopted by the several councils thereof. Such municipal corporations shall be invested with the full powers, duties and authority granted in this title.

ALA. CODE § 11-40-1 (1992).

The dedication and acceptance of the streets and sewer system within McIntosh Villas is similar to the dedication and acceptance performed with regard to McIntosh Subdivision or any other subdivision within the City of Phenix City. Accordingly, it is the opinion of this Office that the city has the authority to accept the dedication of streets, roads, and utilities within McIntosh Villas.

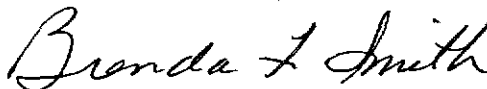
CONCLUSION

The City of Phenix City has the statutory authority to accept the dedication of streets, roads, and utilities of a privately owned condominium complex that is incorporated in a subdivision within Phenix City that has mixed zoning.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

TK/MMG
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